

Order

Michigan Supreme Court
Lansing, Michigan

March 22, 2011

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2011-04

Michael F. Cavanagh
Marilyn Kelly
Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly
Brian K. Zahra,
Justices

Proposed Amendments of
Rule 3.911 and Rule 3.915
of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rule 3.911 and Rule 3.915 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at

www.courts.michigan.gov/supremecourt/resources/administrative/ph.htm.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 3.911 Jury

(A) [Unchanged.]

(B) Jury Demand. A party who is entitled to a trial by jury may demand a jury by filing a written demand with the court ~~within:~~

(1) ~~14 days after the court gives notice of the right to jury trial, or~~

(2) ~~14 days after an appearance by an attorney or lawyer guardian ad litem, whichever is later, but no later than 21 days before trial.~~

The court may excuse a late filing in the interest of justice.

(C) [Unchanged.]

Rule 3.915 Assistance of Attorney

(A) [Unchanged.]

(B) Child Protective Proceedings.

(1) Respondent.

- (a) Advice and Right to Counsel. At respondent's first court appearance, the court shall advise the respondent of the right to retain an attorney to represent the respondent at any hearing conducted pursuant to these rules and that
 - (i) the respondent has the right to a court appointed attorney at any hearing conducted pursuant to these rules, including the preliminary hearing, if the respondent is financially unable to retain an attorney, and,
 - (ii) if the respondent is not represented by an attorney, the respondent may request a court-appointed attorney at any later hearing.
- (b) Appointment of an Attorney. The court shall appoint an attorney to represent the respondent at any hearing, including the preliminary hearing, conducted pursuant to these rules if
 - (i) the respondent requests appointment of an attorney, and
 - (ii) it appears to the court, following an examination of the record, through written financial statements, or otherwise, that the respondent is financially unable to retain an attorney.
- (c) The respondent may waive the right to the assistance of an attorney, except that the court shall not accept the waiver by a respondent who is a minor when a parent, guardian, legal custodian, or guardian ad litem objects to the waiver.

(2) Child.

- (a) The court must appoint a lawyer-guardian ad litem to represent the child at every hearing, including the preliminary hearing. The child

may not waive the assistance of a lawyer-guardian ad litem. The duties of the lawyer-guardian ad litem are as provided by MCL 712A.17d. At each hearing, the court shall inquire whether the lawyer-guardian ad litem has met or had contact with the child, as required by the court or MCL 712A.17d(1)(d) and if the lawyer-guardian ad litem has not met or had contact with the child, the court shall require the lawyer-guardian ad litem to state, on the record, the reasons for failing to do so.

- (b) If a conflict arises between the lawyer-guardian ad litem and the child regarding the child's best interests, the court may appoint an attorney to represent the child's stated interests.

(C)-(E) [Unchanged.]

Staff Comment: The proposed amendment of MCR 3.911 would eliminate the 14-day time frame during which a demand for jury must be made. The proposed revision of MCR 3.915 would clarify that counsel should be appointed for a parent even at the preliminary hearing of a child protective proceeding.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by July 1, 2011, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2011-04. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 22, 2011

Corbin R. Davis
Clerk